BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE: CYNTHIA A. HOLLOWAY
NO.: 00-143
_____/

Florida Supreme Court
Case No.: SC00-2226

JUDICIAL QUALIFICATIONS COMMISSION'S SUMMARY OF EVIDENCE ADDUCED AT TRIAL & RESPONSE TO RESPONDENT HOLLOWAY'S TRIAL BRIEF

COMES NOW the Florida Judicial Qualifications Commission (hereinafter referred to as the JQC), by and through the undersigned Special Counsel, and hereby submits its summary of evidence adduced at the hearing on the formal charges filed against Judge Cynthia A. Holloway and its response to Judge Holloway's Trial Brief. Judge Holloway has been charged with violations of Canons 1, 2, 3, and 5 of the Code of Judicial Conduct. The evidence presented during the hearing on the formal charges established by clear and convincing evidence that Judge Holloway abused her power as a judge, demonstrated conduct unbecoming a member of the judiciary and gave sworn, misleading, and evasive testimony demonstrating her unfitness to hold judicial office thus warranting discipline, including, but not limited to, her removal from office.[1]

[1] Special Counsel is also seeking to recover all costs of investigation and prosecution of this matter from Judge Holloway pursuant to Fla. Const. Article V, §12 (f)(2)(j).

I. SUMMARY OF THE CASE

The primary events, which resulted in the charges brought against Judge Holloway, occurred during the litigation of an emotionally charged child custody matter entitled *Adair v. Johnson*. The child's mother, Robin Adair, is the sister of Judge Holloway's best friend, Cynthia Tigert. (T. 98, 526, 630). The evidence presented at trial demonstrated by clear and convincing evidence that Judge Holloway repeatedly lent the prestige of her judicial office by interfering in the *Adair v. Johnson* matter in an attempt to influence the outcome of the case to benefit her close friends.

Specifically, the evidence presented at trial established that Judge Holloway had an *ex parte* communication with the Honorable Ralph Stoddard, the presiding Judge in the *Adair v. Johnson* matter. (T. 18, 56, 57, 76, 77). Judge Stoddard voluntarily recused himself from the *Adair v. Johnson* case following his encounter with Judge Holloway. (T. 80, 81). The evidence further established that Judge Holloway attempted to influence the outcome of the *Adair v. Johnson* matter by contacting Detective John Yaratch of the City of Tampa Police Department, assigned to investigate allegations of abuse made against the child's father in the *Adair v. Johnson* case. (T. 312, 316, 644). Additionally, fearing rumors of a pending JQC investigation, and the threat of drawing opposition in her upcoming re-election, Judge Holloway provided misleading and purposely evasive answers during her deposition given in the

Adair v. Johnson matter when questioned about her *ex parte* communication with Judge Stoddard and her contact with Detective Yaratch.

The evidence further established that subsequent to her deposition, Judge Holloway filed an errata sheet which compounded her misleading and evasive deposition testimony by failing, once again, to fully answer the deposition questions asked. Notably, the evidence presented at trial established that the errata sheet was not submitted until Judge Holloway's husband and lawyer, Mr. C. Todd Alley, received a call from Robin Adair's attorney, Mr. Ray Brooks, advising him that Detective Yaratch had testified in deposition about his contact with Judge Holloway.

The trial testimony further established that, in addition to the transgressions associated with the *Adair v. Johnson* matter, Judge Holloway improperly lent the prestige of her judicial office to interfere in a divorce matter involving her brother James Holloway. This incident, albeit a minor event compared to Judge Holloway's acts in the *Adair v. Johnson* matter, is significant, as it evidences a pattern of conduct by Judge Holloway demonstrating repeated disobedience for the Code of Judicial Conduct which mandates that Judges refrain from letting family or other relationships influence their judicial conduct or judgment.

1. FORMAL CHARGE 1 (a) – Attempting to influence City of Tampa Police Detective John Yaratch

On February 23rd, 2000, veteran child abuse Detective John Yaratch was

assigned to investigate a complaint of abuse reported by a schoolteacher concerning minor child P.A., the daughter of Robin Adair and Mark Johnson.

[2] (T. 309). On February 24th, 2000, the day after being assigned to investigate the allegations concerning P.A., Detective Yaratch received a telephone call from Judge Holloway. (T. 312).

[3] According to Detective Yaratch, Judge Holloway voiced her concern "…about (the allegations involving P.A.) and …requested an interview be conducted (of the child) at the Child Advocacy Center (CAC) …as soon as possible." (The CAC is a center where a videotaped forensic interview of alleged child victims is conducted for the collection and documentation of evidence for use in other proceedings.) Judge Holloway also informed the Detective of her personal connection to the child and told him that P.A. had "stayed at her house on a couple of occasions…" (T. 316).

Judge Holloway denies the allegation that she attempted to influence Detective Yaratch. Instead she claims her call to Detective Yaratch was made out of concern for the child and to expedite the investigation because she knew the CAC center is "…always backed up." (T. 664). During the formal hearing, Judge Holloway testified that she did not request a CAC interview but merely asked Detective Yaratch "…if you're going to do a CAC interview in this case, could you do it quickly and not let this information go stale…" (T. 644). Contrary to Judge Holloway's claim that she merely asked the detective to expedite his investigation, Detective Yaratch testified that Judge Holloway "…made the request that I conduct the (CAC) interview." (T. 323). He further testified that he considered the telephone call out of

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[2] P.A. is the subject child in the *Adair v. Johnson* matter; her initials are being used to protect her identity.

[3] Judge Holloway's GTE Wireless Telephone Bill corroborates her February 24, 2000 telephone call to Detective Yaratch. The phone bill was admitted into evidence as Respondent's Exhibit Tab 3.

the ordinary, as he does not "get calls from judges everyday about cases." (T. 337) Consequently, Detective Yaratch documented the call in his police report out of concern for himself in the event "…the person who originated the case was not satisfied with the outcome." (T. 324). Although Detective Yaratch testified that he did not feel Judge Holloway asked him to do anything inappropriate, he did feel the phone call was an "inappropriate attempt to influence…" him to "… do certain things in the investigation." (T. 326, 338, 339). Detective Yaratch testified that not all child victims are interviewed at the CAC center and typically the decision to interview the child is left to the investigator assigned to the case. (T. 319). Detective Yaratch further testified that he decided not to have P.A. submit to a formal interview at the CAC after personally speaking to the child and conferring with two other detectives who previously investigated unfounded allegations of abuse. (T. 318, 319).

Clearly the call to Detective Yaratch demonstrates a violation of Canon 2 (B) of the Code of Judicial Conduct which specifically mandates a Judge to refrain from allowing "…family, social, political or other relationships to influence the judge's judicial conduct or judgment," and in addition, directs judges "… not to lend the prestige of judicial office to advance the private interests of the judge or others…" Standing alone, one could possibly conclude that Judge Holloway's call to Detective Yaratch was nothing more than an isolated violation of Canon 2 (B), motivated by her concern for a minor child. Unfortunately for Judge Holloway, the call to Detective Yaratch was not her only transgression. The impropriety of the telephone call to Detective Yaratch is enhanced by the totality of Judge Holloway's actions and interference in the *Adair v. Johnson* matter.

By way of background, Cynthia Tigert testified during the formal hearing that her sister's child custody case was not going well. Consequently, on November 18th, 1998, Judge Holloway was

subpoenaed to appear before Judge Stoddard as a character witness on behalf of Ms. Adair. Judge Holloway agreed to serve as a character witness for Ms. Adair even though she did not have a close relationship with Ms. Adair and only saw her two or three times a year.

[4] (T. 102; 542). Judge Holloway's willingness to serve as a character witness is discouraged by The Code of Judicial Conduct. According to the Commentary section of Canon 2(B), judges are discouraged from appearing as character witnesses "…because it places lawyers who may appear before (the judge) in an awkward position of cross-examining the testifying judge. The Commentary section provides an exception for "…unusual circumstances where the demands of justice require (the character witness testimony of a judge.)" There is no evidence that Judge Holloway's character evidence was needed in the matter. Nevertheless, Judge Holloway offered the prestige of her name as a Circuit Court Judge to bolster the character of her best friend's sister.

Additionally, Judge Holloway's November 18th, 1998 testimony in the *Adair v. Johnson* matter is relevant to illustrate by circumstantial evidence that Judge Holloway wanted a forensic interview of P.A. done at the CAC center and called Detective Yaratch with the specific intent to influence him. Judge Holloway offered the following testimony during the November 18th, 1998 hearing before Judge Stoddard:

> Q. Have you ever discussed with Miss Adair, [P.A.'s] going to CAC for an interview or evaluation?
>
> A. Yes.
>
> Q. And how recently did you have a conversation with Miss Adair?

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[4] Judge Holloway's November 18, 1998 testimony before Judge Stoddard in the *Adair v. Johnson* matter was admitted into evidence during the hearing on the formal charges.

A. Probably in the last thirty days.

Q. And did you make a recommendation or suggestion to Robin Adair about P.A. going to CAC?

A. Absolutely, I did.

(Judge Holloway hearing testimony dated November 18, 1998, pp. 6-8)

In addition, Judge Holloway's desire that P.A. submit to a CAC interview was corroborated by Ms. Adair's formal hearing testimony wherein she admitted that in October 1998, during a separate investigation conducted by City of Tampa Detective Keene, Judge Holloway suggested that Ms. Adair have P.A. interviewed at the CAC center. (T. 104).

It is evident from the trial testimony that the custody case was not going well for Ms. Adair and that Judge Holloway placed the call to Detective Yaratch to get him to conduct a CAC interview of the child in an effort to obtain a videotaped interview for use as evidence in the *Adair v. Johnson* custody case.

In her trial brief, Judge Holloway claims her contact with Detective Yaratch was not an abuse of power or an improper utilization of the prestige of her office because the call was made out of concern that "… this four-year old child might be 'slipping through the cracks'." (Judge Holloway's Trial Brief p. 3). Judge Holloway has testified that according to her experience as a circuit court Judge the CAC center is "always backed up." (T. 644). Therefore her intent to get P.A. interviewed before other children similarly situated is an absolute abuse of power. Judge Holloway's claim that "…as a mother, as a citizen and as a person who loves (the subject child) she had a moral obligation to make certain that everything possible was done to protect this young child" is legally incorrect and opposite of the intent of the rules of Judicial Conduct. Ms. Adair was at all times represented by competent counsel and at one point even had <u>three lawyers</u> representing her interests. (T. 105-106). If the parties wanted a forensic CAC interview

conducted of P.A., the proper procedure would have been to petition Judge Stoddard by way of formal Motion. Judge Holloway was absolutely not justified in contacting the lead Detective to request, suggest, or otherwise influence him to do anything.

In her Trial Brief, Judge Holloway relies upon *In re: McMillan*, 26 Fla. L. Weekly S522 (Fla. 2001) and *In re: Frank*, 753 So. 2d 1228 (Fla. 2000) in support of her defense that the telephone call to Detective Yaratch was not inappropriate. However, the *McMillian* and *Frank* cases are distinguishable from the case at bar and do not support Judge Holloway's actions. In *McMillian*, the JQC and Supreme Court concluded there was clear and convincing evidence to remove Judge McMillian based upon cumulative misconduct. One charge against Judge McMillian involved false allegations that incumbent County Judge George Brown pressured law enforcement officers for preferential treatment for his own children when they were arrested. The Brown matter involved an isolated incident where one officer responded to Judge Brown's neighbor's house reference people fighting or engaged in a prank in the Brown home. The uniform officer, who responded to the scene, allegedly interviewed the neighbor but failed to interview Judge Brown or the children allegedly involved. The officer testified that Judge Brown called to inquire why nobody at his home had been interviewed. The officer further claimed that although Judge Brown "spoke in a demeaning tone…" he "never actually sought preferential treatment." *Id.* at 22-23.

Judge Holloway's telephone call to Detective Yaratch is clearly distinguishable from the Brown matter. Judge Brown contacted the responding officer to ask him/her a <u>question</u> regarding an incident involving his son. In contrast, Judge Holloway telephoned the lead Detective investigating an allegation of child abuse to affirmatively influence his investigation. Judge Holloway was not a neutral party, but rather

had testified as a character witness for the child's mother in the companion child custody case and had furthered testified against the child's father during a separate hearing on July 14th, 1999. It is precisely Judge Holloway's close ties to the pending litigation that required her to refrain from interfering with the police investigation.

Furthermore, Judge Holloway cites to *In re Frank*, 753 So. 2d 1228 (Fla. 2000), and specifically the holding of the Florida Supreme Court stating:

> Knowledge that one is a judicial officer or respectful conduct in response to such knowledge does not automatically translate into a determination that a judicial position has been abused…. A judicial officer should not be sanctioned simply because those with whom he or she has interaction are aware of the official position. The use of the judicial position or power of position in an unbecoming manner requires more than simply someone being aware of one's position. The gravamen of the charge under the circumstances requires that there be some affirmative expectation or utilization of position to accomplish that which would not have occurred. (Emphasis added)

The *Frank* case does not support Judge Holloway's actions. In light of Judge Holloway's personal interest in the outcome of the *Adair v. Johnson* matter, it is obvious she telephoned Detective Yaratch to subtly let him know she was involved in the case and to direct him to conduct a videotaped CAC interview of the subject child.

2. FORMAL CHARGES 1 (c) & 2 – Attempting to influence Judge Stoddard by engaging in an angry and demeaning *Ex parte* communication with the Judge.

During the hearing on the formal charges, Judge Holloway stipulated to the charges that she entered Judge Stoddard's chambers on March 3rd, 2000 and in an angry and demeaning fashion demanded that Judge Stoddard hold an early hearing concerning the P.A.'s shelter status. In addition, Judge Holloway stipulated that she suggested to Judge Stoddard that Mark Johnson's attorney had an improper hold on him when she told Judge Stoddard that he "…must have pictures (with Judge Stoddard) and a dog, that's

why somebody can get something out of you and nobody else can." (T. 18).

Even though Judge Holloway stipulated to these charges, the facts admitted into evidence regarding this incident are significant to understanding the totality of Judge Holloway's acts and the proper determination of sanctions. (T. 19).

The *Adair v. Johnson* case took a dramatic and critical turn on Saturday, February 26th, 2000, when Judge Stoddard determined that "…due to the … acrimony between (the parents)…" the subject child needed to be sheltered in the home of a mutually agreed upon neutral party, away from both her mother and father. (T. 71, 72). A series of psychological evaluations and recommendations were expected during the period of sheltering.

Immediately following the sheltering hearing, Robin Adair and Cynthia Tigert went looking for Judge Holloway at an area softball field where Judge Holloway's child was playing ball. Ms. Tigert and Ms. Adair informed Judge Holloway that P.A. had been sheltered, and allegedly asked Judge Holloway to help them understand why the child had been placed in sheltered care. (T. 544). According to Ms. Adair, her lawyer did not understand what happened, and could not provide her with an explanation. (T. 108). Both Ms. Adair and Ms. Tigert deny asking Judge Holloway to intercede on their behalf. (T. 110, 111, 547).

Judge Holloway and her husband C. Todd Alley left for vacation the following day and returned on Thursday, March 2nd, 2000. Upon their return, Ms. Tigert told Judge Holloway, "…P.A. is still in shelter and … we can't get a hearing for another two weeks." (T. 560). Ms. Tigert also told Judge Holloway, "I don't understand why Mr. Johnson can always get emergency hearings and we can't." Ms. Tigert further testified that "(Mr. Johnson) seemed to always be able to get in there right away, and we

never could…" (T. 561). According to Ms. Tigert, Judge Holloway was "upset" by the news P. A. was still in sheltered care and "could not believe" Ms. Adair could not get a hearing. (T. 560). (On March 2nd, 2000 Judge Stoddard denied Ms. Adair's petition for an emergency hearing regarding P. A.'s custody status because he, "…didn't think there was enough time for everyone to finish their (evaluations)…") (T. 77).

The following day, Friday, March 3rd, 2000, Ms. Adair sought the assistance of politicians and anyone who could exert pressure over Judge Stoddard, and she testified that she, "…called a lot of people…" including her congressman and representative in an attempt to find "…somebody higher than (Judge Stoddard)" to get her child out of sheltered care. (T. 115). A copy of Judge Holloway's office telephone message ledger was admitted into evidence as JQC exhibit 7. The ledger documents a telephone call from Ms. Adair to Judge Holloway's chambers on March 3rd, 2000, wherein she provided Judge Holloway the following information: "The attorney for DCF (Department of Children and Families) is Leslie Hoffman, emergency hearing March 10th at 10:30 a.m." (T. 114). Judge Holloway's Judicial Assistant, Janice Wingate, testified during the hearing on formal charges that Judge Holloway asked her "…to find out the name of a particular attorney … with the Department of Children and Families… in the *Adair v. Johnson* case." Ms. Wingate determined that Leslie Hoffman was the DCF attorney assigned to the *Adair v. Johnson* case and called Ms. Hoffman's telephone number to allegedly "…find out basically what her position is (and) exactly what office that she worked in." (T. 803-802). During the hearing on formal charges Judge Holloway denied requesting Leslie Hoffman's name and further testified that she was "not sure why" Ms. Adair called her office with Ms. Hoffman's name. (T. 718). Ms. Tigert also visited Judge Holloway in her chambers on the afternoon of March 3rd, 2000. Ms. Tigert voiced her "frustration in trying

to get the baby out of shelter," telling Judge Holloway that she did not know where to go or what to do because she did not "understand the system." (T. 566).

Following the visit from Ms. Tigert, Judge Holloway went to speak to Judge Stoddard. According to Judge Stoddard's Judicial Assistant, Sharon Cosby, Judge Holloway "forcefully and quickly" opened the office door and walked into Judge Stoddard's hearing room without stopping to ask permission to meet with him. (T. 56-57).

[5] Judge Holloway spoke to Judge Stoddard in an "irritated" and "agitated" manner and asked him, "How can you leave her there" – speaking of the child – "How can you leave her there that long?" "How can you make them wait?" (T. 59). Judge Holloway also told Judge Stoddard that, "…she had seen the child with her mother and that Ms. Adair is a good mother, even though she may be unstable in some ways…" (T. 63). Ms. Cosby further testified that Judge Holloway pointed her finger at Judge Stoddard and demanded that he "Have a hearing." Judge Stoddard remained seated behind his hearing table, "looking shocked." (T. 60). Before leaving, Judge Holloway stated, "I'd like to know what kind of hold Ronny Russo has on this case."

[6] Judge Holloway then said "something about pictures of a dog which shocked Ms. Cosby as she was familiar with the phrase being used to accuse someone of having "…pictures of someone having sex with a dog." (T. 60-66). Ms. Cosby immediately documented the incident in a typewritten statement pursuant

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[5] Judge Stoddard's hearing room has a desk and conference table configured in the shape of a "T". The hearing room is located inside Judge Stoddard's chambers and is separate from his private office and the entry office where his judicial assistant is located.

[6] Mr. Ron Russo was Mark Johnson's attorney in the *Adair v. Johnson* case. There is no evidence to substantiate Judge Holloway's insinuation of impropriety on behalf of either Judge Stoddard or Mr. Russo.

to Judge Stoddard's instructions. (T. 61). Judge Holloway made these comments to Judge Stoddard in front of his bailiff, a law school student, and court reporter who were all seated in Judge Stoddard's hearing room. (T. 64-65; 76).

According to Judge Stoddard, Judge Holloway "expressed some disagreement and was very angry that (he) had not given Ms. Adair a hearing prior to the (scheduled) hearing…(date)." Judge Holloway asked, "What does it take to get an emergency hearing? …What kind of hold does Ron Russo have over you?" Judge Holloway's demeanor was, "…sarcastic…angry and emotional." (T. 76, 77). Judge Holloway's comments "hurt" Judge Stoddard's "feelings" because his "methodology was being so angrily denounced…" Her comments also concerned him because Judge Holloway accused him of being "biased" and "unfair". (T. 79). Prior to leaving Judge Stoddard's chambers, Judge Holloway implied that someone "… must have pictures (with Judge Stoddard) and a dog, and that's why somebody can get something out of you and nobody else can." (Judge Holloway deposition dated May 8, 2001 admitted into evidence as JQC Exhibit 14.).

Immediately following Judge Holloway's *ex parte* encounter, Judge Stoddard had his judicial assistant document the incident in a typed statement and prepare his recusal from the *Adair v. Johnson* matter. (T. 80). Judge Stoddard recused himself because Judge Holloway, was a "witness in the case" and had a "fairly lengthy conversation with him." As such, Judge Stoddard felt, "… there was no way (he) could continue (with the) case." He "had not doubt" Mr. Johnson could "…ever feel they would get any kind of a fair shake after…" Judge Holloway's actions. (T. 80-81).

Judge Holloway's *ex parte* encounter with Judge Stoddard had serious consequences beyond her breach of the Rules of Professional Conduct and Code of Judicial Conduct. Not only did her actions cause

Judge Stoddard to recuse himself from the *Adiar v. Johnson* matter after presiding over the case since 1997, but according to Mr. Johnson, her actions caused P. A. to remain in sheltered care "an extra five weeks" while the new judge got "up to speed" and felt "… comfortable enough…" with the case to make a custody decision. (T. 166).

In her trial brief, Judge Holloway improperly cites to testimony in the *Adair v. Johnson* matter not admitted into evidence during the hearing on formal charges in an attempt to refute the uncontroverted testimony offered by Mr. Johnson that his daughter spent an additional five weeks in sheltered care due to Judge Holloway's actions. (Judge Holloway's Trial Brief, p. 8-9). Once again, Judge Holloway and her lawyers have chosen not to follow the rules. Nevertheless, the inadmissible evidence relied upon does not refute Mr. Johnson's trial testimony. The excerpts cited in Judge Holloway's trial brief fail to disprove the fact that P. A. remained in sheltered care longer than she would have, but for her *ex parte* communication with Judge Stoddard and his sudden departure from the case.

Curiously, it should be noted that Ms. Adair wanted Judge Stoddard removed from the case prior to Judge Holloway's *ex parte* communication. Ms. Adair's lawyers had already prepared (but had not filed) a sworn affidavit asking for Judge Stoddard's recusal alleging that she could not get a fair trial. (T. 130). Certainly, with her many years on the bench, Judge Holloway should have known her *ex parte* communication with Judge Stoddard would lead to his recusal. The fact that Judge Holloway had the *ex parte* communication with Judge Stoddard while Ms. Adair wanted him off the case is either a remarkable coincidence or a deliberate act to assure Ms. Adair got a new judge.

In her defense, Judge Holloway claims her *ex parte* tirade in Judge Stoddard's office was motivated by her concern over P.A. who was four years old at the time of the sheltering. (T. 721). Judge

Holloway probably did have concern for the child. However, the evidence shows her friends had recently failed in their attempt to get an emergency hearing and as a result, were calling congressmen and representatives to intercede on their behalf. (T. 115). Consequently, after a visit from Ms. Tigert, Judge Holloway decided to take matters into her own hands and demanded that Judge Stoddard set an expedited hearing date, a task her friends could not accomplish on their own.

Notably, Judge Holloway's demand that Judge Stoddard set an expedited hearing date is similar to her telephone call to Detective Yaratch wherein she took matters into her own hands to "…make sure (the) investigation didn't go stale … that the witnesses got spoken to…" and that Detective Yaratch submit the child to a CAC interview. (T. 316, 654, 715). Judge Holloway acknowledges her *ex parte* communication was wrong however, she fails to recognize that her call to Detective Yaratch was improper. (T. 716).

3. FORMAL CHARGES 3, 4 & 5 – Providing false, misleading and purposely evasive deposition testimony.

On July 19, 2000, Judge Holloway was deposed in the *Adair v. Johnson* matter by Mark Johnson acting *pro se*. Also present at the deposition were Judge Holloway's two attorneys Mr. C. Todd Alley, (her husband) and Mr. James Holloway, (her brother). Robin Adair was present as the Petitioner, represented by her attorney Mr. Ray Brooks. (T. 169, 170; Deposition of Judge Holloway dated July 19, 2000 admitted into evidence as JQC Exhibit 6.).

Prior to scheduling the deposition, Judge Holloway claims that two witnesses interviewed by the JQC's investigator informed her that the JQC was investigating an incident in her courtroom involving Dr.

Sylvia Carra, a psychologist in the *Adair v. Johnson* matter.

[7] (T. 645, 753, 754; Deposition of Judge Holloway dated May 8, 2001 admitted into evidence as JQC Exhibit 14.).

Armed with the knowledge of a pending JQC investigation, Judge Holloway and her husband, acting as her attorney, made the strategic decision that he would object to any questions posed by Mr. Johnson relating to her March 3rd, 2000 *ex parte* encounter with Judge Stoddard because they felt the questions were irrelevant, intended to harass, and would ultimately be turned over to the JQC. (T. 656, 657, 755, 756). Mr. Alley did not file a Motion for Protective Order seeking to preclude Mr. Johnson from asking questions regarding Judge Holloway's *ex parte* communication, which lead to the recusal of the presiding Judge. Judge Holloway's deposition strategy (which included postponing the deposition until after the re-election qualifying deadline had passed) evidences a predisposition to avoid answering any potentially harmful questions. (T. 680, 681, 785).

Judge Holloway is charged with providing false or misleading testimony concerning her telephone contact with Detective Yaratch and her *ex parte* encounter with Judge Stoddard as well as providing an incomplete errata sheet.

During the subject deposition, Mr. Johnson asked Judge Holloway the following questions concerning her prior contact with Detective Yaratch:

[Questions asked by Mark Johnson]

Q. Have you or anyone in your office ever contacted law enforcement about his case?

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[7] JQC investigator Robert Butler had in fact questioned numerous witnesses regarding the Dr. Carra incident in June 2000. The JQC did not file formal charges regarding the alleged incident for lack of clear and convincing evidence of misconduct.

A. Yes.

Q. Who and when, if you can recall?

A. I think just to determine who was going to investigate the most recent allegation, just to find out the name of the detective attached to the file.

Q. Did you ever speak to the detective?

A. I've spoken to the detective a lot, but not necessarily about this case. I don't really recall whether I spoke to him directly or not. I don't believe that I did.

Q. You think it's possible that you did?

A. Anything is possible.

Q. Are you aware that Detective John Yaratch has told me and Ron Russo that you called him about this case?

A. No.

Q. And that you lobbied him to have P.A. submitted to another CAC interview?

A. No.

Q. Are you saying you didn't do it?

A. I'm certainly not saying I lobbied Detective Yaratch to do anything.

(Judge Holloway deposition dated July 19, 2000, pp. 35-36, admitted into evidence as JQC Exhibit 6.)

Following Judge Holloway's deposition, she claims she returned to her office where her Judicial Assistant Janice Wingate reminded her that she had in fact spoken to Detective Yaratch about the *Adair* matter. (T. 653, 769, 801). Judge Holloway claims she telephoned her husband and advised him of the discrepancy. (T. 653). According to Mr. Alley, he began to prepare the subject errata sheet immediately. (T. 772). Curiously, the errata sheet was not provided to the court reporter until after Mr. Alley received

a telephone call from Ms. Adair's lawyer, Ray Brooks, after he had deposed Detective Yaratch in the *Adair v. Johnson* matter. Mr. Brooks telephoned Mr. Alley to advise him that Judge Holloway's deposition "…didn't seem to line up…" (T. 591, 602).

The subject errata sheet states:

> This deposition was taken after I had spent three hours at the funeral of Harry Lee Coe. Upon further reflection, I do recall a brief telephone conversation with Detective Yaratch. During this conversation, informed Detective Yaratch that I did not want to discuss the facts of this investigation but hoped that the investigation would be handled in a timely fashion. (JQC Trial Exhibit 6)

In addition to its suspect timing, the errata sheet is incomplete, as it fails to mention Judge Holloway's request that the child be examined by the CAC center. Further, Judge Holloway's claim that she did not remember her conversation with Detective Yaratch because she had given the deposition under emotional duress after attending Judge Harry Lee Coe's funeral is not credible in light of the specific wording of the questions posed by Mark Johnson and how important the *Adair v. Johnson* case was to Judge Holloway and her closest friends.

The mention of Judge Coe's funeral is a red herring intended to disguise Judge Holloway's intent to provide misleading and incomplete testimony during the subject deposition. Judge Holloway had a solely professional relationship with the late Judge Harry Lee Coe. She did not speak to him on a daily or even monthly basis, and only saw him in his capacity as the State Attorney. (T. 686, 687; Judge Holloway deposition dated May 8, 2001, admitted into evidence as Exhibit 14). Therefore, her attendance at his funeral should not have been traumatic enough to cause memory failure to the extent claimed by Judge Holloway. Further, if she was truly not mentally able to give a deposition, Judge Holloway as an attorney, or her two lawyers, should have suspended the deposition.

Mark Johnson's deposition questions specifically ask Judge Holloway if she contacted Detective Yaratch and whether or not she asked Detective Yaratch to submit the child to a CAC interview. These questions alone should have been enough to trigger Judge Holloway's recollection about her conversations with the Detective without the need to have her memory refreshed by her Judicial Assistant who did not take part in the subject conversation with Detective Yaratch. It is utterly unreasonable that after serving as a witness in the *Adair v. Johnson* matter on two separate occasions, obtaining Detective Yaratch's name and telephone number, and having an angry *ex parte* encounter with the Judge Stoddard, that Judge Holloway would forget she contacted Detective Yaratch.

Judge Holloway further claims she did not provide false or misleading testimony regarding her *ex parte* contact with Judge Stoddard as alleged in charge 4 for two reasons. First, as her errata sheet explains, she thought Mark Johnson's questions related to her conduct on a different date and secondly, because her lawyers told her they would object to any questions pertaining to her March 3rd encounter with Judge Stoddard. Therefore, not hearing an objection from her lawyers during the subject questions posed by Mr. Johnson, confirmed in Judge Holloway's mind that Mr. Johnson's questions were limited to her behavior on a date other than March 3rd, 2000. (T. 706, 707).

[Questions asked by Mark Johnson]

Q. When did you learn that P.A. had been sheltered?
A. On a Saturday morning. I don't really recall the date or the time. I was at the baseball field, I think, or softball field.

Q. Did Cindy Tigert call you?
A. Yes.

Q. What was your reaction?
A. I was shocked.

Q. Did you do anything in response to that development in the case?
A. I don't recall being able to do anything at that point.

Q. Did you contact Ralph Stoddard?
A. No.

Q. Did you telephone him, contact him in anyway?
A. No.

Q. Did you go see him?
A. No.

(Judge Holloway deposition dated July 19, 2000, pp. 35-36, admitted into evidence as JQC Exhibit 6.)

The subject errata sheet states:

> My responses to these questions relate to the Saturday of the emergency shelter hearing referenced on Page 38, Line 24.

It is clear from her pre-deposition strategy that Judge Holloway intended to mislead Mr. Johnson and purposely evade the questions posed regarding her *ex parte* encounter with Judge Stoddard. The defense that she thought the questions posed pertained to a date other than the day she had the *ex parte* encounter with Judge Stoddard is not reasonable. When asked, "Did you telephone him, contact him in anyway? – Did you go see him?" Judge Holloway had the obligation to answer the questions posed fully and completely. The errata sheet submitted in reference to these questions does not answer Mr. Johnson's questions regarding Judge Holloway's *ex parte* contact with Judge Stoddard. The failure to fully answer relevant questions posed and the incomplete errata sheet are consistent with Judge Holloway's desire avoid negative publicity and prevent the JQC from finding out about her attempt to influence Detective Yaratch and her *ex parte* communication with Judge Stoddard.

The Third District Court of Appeals has recently authored an opinion denouncing precisely the same type of evasive and narrow responses provided by Judge Holloway. In *Leo's Gulf Liquors v.*

Lakhani, 2001 WL 1006270 (Fla. 3rd DCA September 5, 2001), the court stated,

> "We stand firm upon our precedent, which categorically rejects this type of gamesmanship during pretrial or trial proceedings when such tactics ultimately serve to subvert the truth. Witnesses who give sworn testimony by way of interrogatories, at depositions, pretrial hearings and trial, swear or affirm to tell the truth, *the whole truth*, and nothing but the truth. WE expect and will settle for nothing less. Lawyers who advise their clients and/or witnesses to mince words, hold back on necessary clarifications, or otherwise obstruct the truth-finding process, do so at their own, and their clients' peril."

Judge Holloway, as well as her husband and brother acting as her lawyers, were hoping to avoid answering embarrassing and potentially harmful testimony and seized on the opportunity to so do with a *pro se* litigant taking his first deposition. (T. 176, 177). In sum, Judge Holloway violated Canons 1, 2 and 5 (A) of The Code of Judicial Conduct by providing deposition responses which were not proper, showed disrespect and non-compliance with the law, and did not promote public confidence in the integrity of the judiciary.

4. FORMAL CHARGE 7 – Attempting to advance the private interests of her brother James T. Holloway during his divorce proceeding.

On July 29, 1999, James T. Holloway, Esquire, Judge Holloway's brother, was scheduled to appear before Judge Katherine G. Essrig for the final hearing in his uncontested divorce. (T. 377, 378). Judge Essrig testified at the hearing on formal charges that on July 29, 1999, she exited her hearing room to bring a file to her Judicial Assistant when she saw Judge Holloway in the office surrounded by numerous people waiting for their cases to be called. (T. 378, 380, 381). According to Judge Essrig, Judge Holloway called her by name from across the waiting room and stated something to the effect of: "Katherine, can't you get my brother's case called up? He's got a plane to catch, and he needs to go ahead and have his case heard." (T. 383). Judge Essrig claims Judge Holloway "paused briefly" and said, "And, besides, nothing's contested. They've worked all the matters out, so it's going to be very brief."

(T. 384). Judge Essrig "…had concerns about how it would look if (she) … said 'Sure, No problem'." (T. 385). As a result, Judge Essrig replied, "Well, everybody case is uncontested that's being heard today" and went back to her hearing room. (T. 384).

Judge Essrig claims that she typically tries to accommodate anyone who has a conflict in his or her schedule. (T. 390). However, she admits that she never had another judge come into her chambers and ask that a relative be taken out of turn. (T. 390). As a courtesy, Judge Essrig asked her bailiff to privately see that Mr. Holloway was accommodated so that he did not miss his flight. (T. 392). Judge Essrig testified that Judge Holloway's request made her feel "uncomfortable". She did not "…want it to look like judges were doing favors … or giving preferential treatment to other judges or their relatives." (T. 394).

According to Judge Holloway, she returned to the courthouse in the afternoon and learned that her brother had called and was waiting for his divorce case to be heard. (T. 660). Judge Holloway claims she did not expect her brother to still be there because she thought his case would have been called already. (T. 661). Upon her arrival, Judge Holloway learned the hearings were not scheduled but heard pursuant to a sign-up sheet. (T. 663). In direct conflict with Judge Essrig's testimony, Judge Holloway claims she waited a few minutes, walked up to Judge Essrig's interior office, "stuck (her) head in" and privately said, "Katherine, do you think that you could call my little brother's case next? … It's an uncontested matter, and he has a flight to catch this afternoon." (T. 664, 665). Judge Essrig denies Judge Holloway's claim that she privately asked her to take Mr. Holloway out of turn. (T. 389). Even if you believe Judge Holloway's version of events, the simple act of trying to get her brother's case taken out of turn is inappropriate. There is no reason for Judge Holloway to have interfered in her brother's divorce. Mr. Holloway could have asked to be taken out of turn on his own. To a lesser extent, the incident with Judge

Essrig serves to corroborate the fact that Judge Holloway interferes, interjects and attempts to influence matters involving family and close friends whenever possible, and is yet another violation of Canon 2 by lending the prestige of judicial office to advance the private interests of others.

II. CONCLUSION AND STATEMENT OF THE LAW REGARDING APPROPRIATE REMEDY

Fla. Const. Art. V, section 12(a)(1) authorizes the Commission to investigate and recommend to the Supreme Court the removal from office of any judge, whose conduct during term of office or otherwise "demonstrate a present unfitness to hold office…" The Commission is also empowered to investigate and recommend judicial discipline, defined as "reprimand, fine, suspension with or without pay, or lawyer discipline."

To impose any degree of discipline against a judge, the evidence regarding the charges against him/her must be clear and convincing. *In re LaMotte,* 341 So.2d 513 (Fla. 1977). The object of these disciplinary proceedings is "not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." *In re Kelly,* 238 So.2d 565, 569 (Fla. 1970), *cert. Denied,* 401 U.S. 962, 91 S.Ct. 970, 28 L.Ed. 2d 246 (1971).

In determining whether a judge has conducted himself or herself in a manner which erodes public confidence in the judiciary, this Commission must consider the act or wrong itself and not the resulting adverse publicity. *In re LaMotte,* 341 So.2d 513 (Fla. 1977). Moreover, conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents, or by evidence "of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct, unbecoming a member of the judiciary." *In re Kelly,* 238 So.2d 566. Both were proven in the present case.

The angry *ex parte* encounter with Judge Stoddard standing alone is sufficient to warrant Judge Holloway's removal from office. The act of pointing her finger at Judge Stoddard and ordering him to "have a hearing" in her friends case is unconscionable. Moreover, the severity of the incident is compounded by Judge Stoddard's recusal from the case after having presided over the issues for several years and causing the minor child to remain in sheltered care for an extended period of time, is unforgivable and equally damaging to the integrity and impartiality of the judiciary.

An equally significant transgression is the testimony offered by Judge Holloway during the subject deposition taken by Mr. Johnson on July 19th, 2000. Judge Holloway cannot retain her position as a Judge should the Hearing Panel determine she intended to lie or provide misleading testimony.

Finally, Judge Holloway has demonstrated an overall lack of willingness to recognize her transgressions. As the Supreme Court has stated in *In re Graham*, 620 So.2d 1273 (Fla. 1993), "A judge who refuses to recognize (his) own transgressions does not deserve the authority to command the respect necessary to judge the transgressions of others. We are troubled by the fact that Graham shows no remorse and we can only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct."

Similarly, Judge Holloway has refused to fully accept or acknowledge responsibility for her actions in contacting Detective Yaratch, providing purposely evasive and misleading deposition testimony, and in the incident with Judge Essrig regarding her brother's divorce. Therefore the people of the State of Florida cannot be confident that Judge Holloway will not abuse the office of the judiciary in the future.

Based on the evidence presented, as well as the applicable law, undersigned special counsel respectfully submits that Judge Holloway (1) be removed permanently from sitting as a Circuit Court Judge;

(2) be subject to such additional lawyer discipline as the hearing panel deems appropriate and (3) be assessed the cost of these proceedings.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 Duval Street, Tallahassee, Florida 32399-1927; and by Facsimile with copies by U.S. Mail to: Scott K. Tozian, Esquire, SMITH & TOZIAN, P.A., 109 North Brush Street, Suite 150, Tampa, Florida 33602; Michael S. Rywant, Esquire, RYWANT, ALVAREZ, JONES, RUSSO & GUYTON, P.A., 109 North Brush Street, Suite 500, Tampa, Florida 33602; John Beranek, Esquire, AUSLEY & MCMULLEN, Washington Square Building, 227 Calhoun Street, P.O. Box 391, Tallahassee, Florida 32302; Honorable James R. Jorgenson, Chair, Hearing Panel, Third District Court of Appeals, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; Honorable James R. Wolf, Chairman, Investigative Panel, 301 S. Martin Luther King Blvd., Tallahassee, Florida 32399; and Brooke Kennerly, Executive Director, Judicial Qualifications Commission, Mount Vernon Square, 1110 Thomasville Road, Tallahassee, Florida 32303, this _____ day of January, 2002.

CERTIFICATE OF FONT SIZE

I hereby certify that type font used in this document is 14-point Times New Roman.

FERRELL, SCHULTZ, CARTER, ZUMPANO & FERTEL, P.A. 34th Floor, Miami Center 201 South Biscayne Boulevard Miami, Florida 33131 Telephone: 305 371-8585 Facsimile: 305 371-5732 By:_____ BEATRICE A. BUTCHKO Special Counsel for the Judicial Qualifications Commission Florida Bar No. 0817163	TIMOTHY W. ROSS, Esquire Florida Bar No. 436641 KAYE, ROSE & MALTZMAN, LLP 2 South Biscayne Boulevard, Suite 2300 Miami, Florida 33131 Telephone: (305) 358-6555 Special Counsel for the Florida Judicial Qualifications Commission